



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
ADJUDICATION

Before the Commissioner (SCD)

In the matter of Show Cause Notice under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 for violations of inter-alia Regulation 3(1)(a), 6(3)(c), 6(4), 6(5)(a), 7(1)(a), 7(1)(b), 7(2)(a), 9(4)(b), 13(1), 13(2), 13(3), 14(3), 14(4) and 14(5) of AML and CFT Regulations, 2018 and Clause 17(vii) of the Guidelines on SECP AML and CFT Regulations.

Date of hearing:

September 4, 2019

Present (on behalf of ABL Asset Management Limited)

- i. Dr. Amjad Waheed, CEO
- ii. Mr. Raheel Rehman, Head of Compliance
- iii. Mr. Zaheer Iqbal, Head of Operations

Assisting the Commissioner (SCD)

- i. Ms. Bushra Aslam, Executive Director
- ii. Ms. Tanzila Nisar Mirza, Additional Director

ORDER

This Order shall dispose of proceedings against NBP Funds Management Limited (“NBP Funds”, the “AMC” or the “Company”), which is a public limited company licensed to undertake the business of Asset Management and Investment Advisory Services initiated through Show Cause Notice (the “SCN”) bearing No. SCD/AMCW/ADJ/31/2019-06 dated July 8, 2019 under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 for violations of inter-alia Regulation 3(1)(a), 6(3)(c), 6(4), 6(5)(a), 7(1)(a), 7(1)(b), 7(2)(a), 9(4)(b), 13(1), 13(2), 13(3), 14(3), 14(4) and 14(5) of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (hereinafter referred to as the AML and CFT Regulations) and Clause 17(vii) of the Guidelines on SECP AML and CFT Regulations.

2. A scope specific inspection of NBP Funds was ordered under powers conferred upon Securities and Exchange Commission of Pakistan (SECP or the Commission) under Section 282I of the Companies Ordinance, 1984 vide inspection order bearing No.SCD/S&ED-IW/NBPFUND/2019/092 dated March 11, 2019.

3. The scope of the inspection extended to review and assess the level of compliance of the AMC with respect to the AML and CFT Regulations. However, during the course of inspection, various violations/non-compliances were observed. The inspection team highlighted several deficiencies in the customers’ record/documentation (selected on sample basis) which were in violation of several provisions of AML and CFT Regulations.




4. The Company was called upon to show cause in writing as to why penal action should not be taken against the Company for violations of, inter-alia, Regulations 3(1)(a), 6(3)(c), 6(4), 6(5)(a), 7(1)(a), 7(1)(b), 7(2)(a), 9(4)(b), 13(1), 13(2), 13(3), 14(3), 14(4) and 14(5) of AML and CFT Regulations and Clause 17(vii) of the Guidelines on SECP AML and CFT Regulations.

5. A written reply was received vide letter dated August 8, 2019 from the Company, wherein the contentions made in the SCN were categorically addressed. The following arguments were provided in the reply;

- i. With respect to contents of para 3(i) of the SCN, regarding business relationship with an individual client named Abdul Baqi NBP Funds contended that at the time of the investment, adequate due diligence had been performed and it had been ascertained that the third party "Mr. Iftikhar Ali" was a serving Major in Azad Kashmir Regiment Unit of Pakistan Army. In order to verify the identity of the investor and the beneficial owner, valid copy of CNIC was obtained and the validity of the CNIC was verified through NADRA online portal "Verisys". NBP Funds further asserted that the investor and the beneficiary were also scanned from the World Compliance Tool in order to ascertain that they did not appear on any sanction list or in any other adverse media information. The third party was also called through the Call Center and was asked security questions to ascertain the genuineness of the transactions and the purpose involved. The results of Customer Due Diligence Exercise revealed that the subject investor and the third party involved were currently serving as Lieutenant Colonel and Major, respectively, in the Azad Kashmir Regiment Unit of the Pakistan Army. In this regard, a letter of the Commanding officer had been obtained to verify the information.

NBP Funds claimed that the investor's balance as of March 31, 2019 was Rs.8.07 million. As per the approved Know Your Customer and Anti Money Laundering Policy of the NBP Fund Management Limited, the investor was supposed to be classified as high risk if the investment balance was greater than or equal to Rs.10 million at any specific point in time. The investor was therefore, marked as 'low risk' in the system as on March 31, 2019. The AMC insisted that although, the investor was marked as 'low risk', adequate due diligence had been performed to ascertain the genuineness of the transaction and the purpose involved. The company was of the view that no violation of the requirements of Regulation 6(3c) of the AML / CFT Regulations had been committed.

- ii. In response to Point 3 (ii), NBP Funds mentioned that at the time of establishment of business relationship with Link Dot Net Pakistan Private Limited, Form A and Form 29 were obtained from the subject investor for ensuring compliance with the SECP (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018. The AMC claimed that the said forms clearly reflected the ownership and control structure of the Company. The forms indicated Link Dot Net Telecom Limited, a non- natural person, was a substantial shareholder of Link Dot Net Pakistan Private



Limited. NBP Funds also communicated that in order to comply with the AML and CFT regulations the beneficial ownership of the controlling entity was ascertained. The Enhanced Due Diligence Exercise of the subject investor revealed that the investor was a wholly owned subsidiary of Link Dot Net Telecom Limited, which in turn was owned by Pakistan Mobile Communications Limited (PMCL). Form 'A' of PMCL was obtained in order to comply with the said regulations and to ascertain the list of controlling persons of the ultimate beneficial owner. The AMC further clarified that as per Form 'A' of PMCL it was determined that the members included Companies from UAE and Malta and verification of beneficial ownership to that extent was practically not possible.

- iii. With respect to Point 3(iii) of the show cause notice regarding the corporate account of Barret Hudgson Pakistan Private Limited, NBP Funds declared that Form A was obtained from the subject investor. Form A contained details of the holding company of the subject investor, titled as “The Salim Habib Education Foundation” which held 96% shares of Barret Hudgson Pakistan Private Limited. Moreover, Form A also contained details of the members according to which M. S. Habib bearing CNIC # 42301-0862904-5 held 0.22% shares while Dr. Iram Afaq bearing CNIC # 42101-3890213-6 held only 4% shares.

The AMC further asserted that in the absence of information of the beneficial ownership of Barret Hudgson Pakistan Private Limited, the requisite information was ascertained from Form A and Form 29, which in this case is a reliable document. The AMC reiterated that the beneficial ownership was in the name of Salim Habib Education Foundation which in turn was owned by the following four (4) natural persons:

- Dr. Muhammad Salim Habib - Chairman
- Dr Iram Afaq - MD/ CEO
- Mr. Tariq Muhammad Amin - Director and Company Secretary
- Mr. Hasan Tharani – Director

NBP Funds further asserted that in order to comply with the requirements of the regulations, the identity of the above-mentioned natural persons was checked by obtaining their CNICs. The validity of the CNICs was also verified from the online portal of NADRA through Verisys. In addition to this, the persons were screened through the World Compliance Tool in order to make sure that none of them appeared on the Sanction Lists or in any other significant adverse media information. The Company also mentioned that all these ultimate beneficial owners simultaneously held the office of Directorship/Senior Management in Barret Hudgson Pakistan Private Limited. The AMC emphasized that the requirements of Regulation 7(1)(a) and 7(1)(b) of the AML and CFT Regulations had been adequately complied with.



Further to the above, NBP Funds communicated that the amount of income tax paid by the subject investor in the last four tax years amounted to Rs.1,966,735,695. This information was obtained from the Income Tax Directories (a reliable source as per the AML/CFT regulations) available on the FBR Website and is publicly available information. The AMC was of the view that when the results of the enhanced due diligence exercise provide sufficient evidence as to financial strength and soundness of the investor and the investment is satisfactorily correlated with the investors' financial strength, it is believed that there is no requirement for obtaining additional information with respect to the financial stability of an investor in case of a corporate client. Therefore, the AMC reiterated that there was no violation of the Regulation 9(4) (b) and Regulation 13(1) and 13(3) of the AML and CFT Regulations in this specific case.

- iv. With respect to Point 3 (iv) of the show cause notice pertaining to the account of SICPA Inks Pakistan (Pvt.) Ltd, NBP Funds contended that information of beneficial ownership of SICPA Inks Pakistan (Pvt.) Limited was obtained from Form A, Form 29 and Annual Audited Financial Statements which indicated that SICPA Holdings S.A., had a stake of 53% in SICPA Inks Pakistan (Pvt.) Ltd. while the remaining 47% was held by Pakistan Security Printing Corporation (Pvt.) Ltd. (PSPC) on behalf of SBP/Federal Government. NBP Funds emphasized that as SICPA Holding SA is a "secretive" company and does not publicly communicate its business figures, therefore it was practically impossible to determine the structure of its ultimate beneficial owners. The AMC further asserted that PSPC is an organization wholly owned by the Government of Pakistan. Moreover, the fact that the Banknotes and Prize Bond printing facility of PSPC has been acquired by the State Bank of Pakistan further increases the level of reliance that is to be placed on the beneficial owners of the subject investor.
- v. With respect to Point 3 (v), regarding business relationship with a trust titled as Idara Tolu-E-Islam the AMC declared that at the time of account opening, the list of members/trustees was obtained from the subject investor on company letterhead. All these trustees were also the authorized signatories in the subject account maintained with NBP Fund Management Limited. Adequate due diligence was performed and the verisys of the members were checked from the online NADRA portal. Furthermore, the names of the members were subsequently checked from the World Compliance Tool in order to ensure that no name was included in any of the Sanction lists or in the adverse media information. The AMC claimed that the list of trustees along with the copy of CNICs had been provided to the Inspection team and therefore the requirements of the Regulation 7(2)(a) of the AML and CFT Regulations had been adequately complied with.

With regards to the expired CNIC of the trustee / authorized signatory, the AMC mentioned that the sales facilitator was in follow up with the subject investor for the



provision of valid copy of the CNIC. The copy of the CNIC was provided with the reply to the show cause notice.

- vi. With respect to contents of para 3(vi), regarding an individual joint account titled as Ms. Franey Irani and Mr. Nariman Irani, the AMC stated that copy of the CNIC of joint account holder Mr. Nariman Irani was maintained in the records, however since he had passed away three years ago, obtaining a valid CNIC for the deceased person was practically not possible. The AMC claimed that it had not violated Regulation 6(4) of the AML and CFT Regulations.

With respect to the unusual pattern of investment / redemption, the AMC was of the view that the transactions highlighted in the show cause notice were of normal routine nature where the investor carried out redemption as well as investment transaction at the same time to realize the available capital gains. The AMC insisted that these transactions could not be considered as complex transactions as they had a lawful purpose i.e. transactions were carried out to realize the capital gains. The AMC was of the view that realization of capital gains through carrying out such transactions was legitimate and could not be considered as inappropriate or suspicious and therefore, the requirements of the Regulation 14(3), 14(4) and 14(5) were not applicable in the above-mentioned scenario.

6. The hearing in the matter took place on September 4, 2019 wherein Dr. Amjad Waheed, CEO, Mr. Raheel Rehman, Head of Compliance and Mr. Zaheer Iqbal appeared on behalf of the Company. They reiterated the facts stated in the written reply. The respondents also stated that they fully realize that the Company was not fully compliant with the AML and CFT Regulations and was trying its best to expedite efforts in this regard by constantly upgrading the systems, training the staff and improving internal processes.

7. I have analyzed the facts of the case, considered the documentary evidence placed on record and the arguments put forth by the Respondent Company. I am of the considered view that the submissions by NBP Funds are not plausible on the basis of the following reasons.

- i. With regard to third party transactions in an individual account being maintained by the AMC, it is pertinent to highlight that at the time of inspection, the AMC was non-compliant with the relevant regulations due to the absence of documents to verify the identity of the third party. The letter/certificate of the Commanding Officer indicates that the letter was obtained in May 2019 after the conclusion of the inspection and hence the argument of the AMC that it was compliant with the regulation is not tenable. The observation/violation was highlighted since source of income of Mr. Iftikhar Ali (third party) who had invested Rs.10 million and redeemed Rs.1 million, had not been obtained. Source of income related to Mr. Iftikhar Ali had not been provided during the inspection nor was the letter of findings to inspection team. Moreover, it is important to mention that the document provided with the response of show cause notice, pertains to Mr. Abdul Baqi and not Mr. Iftikhar Ali. Therefore,



details of the third party have still not been provided by the AMC, due to which it remains non-compliant with the relevant AML and CFT Regulations.

- ii. The AML and CFT Regulations were issued in June 2018 and effective immediately after their issuance, and warranted that NBP Funds initiate the process of obtaining documents immediately. The AMC initiated the process several months after the issuance of the regulations and that too when observations were raised by the inspection team. It is my considered view that a six month delay indicates weakness in responsiveness on the part of management.
- iii. The view of NBP Funds in respect SICPA Inks Pakistan (Pvt.) Ltd. is not tenable. At the time of inspection, the AMC was non-compliant with the relevant regulations due to the absence of documents to verify the identity of the legal persons having beneficial ownership in the respective entities, and hence constituted violation of the relevant AML and CFT Regulations. The requisite information was provided after the inspection team highlighted the deficiency. Moreover, it is pertinent to state that NBP Funds is required to conduct its own CDD/EDD even if a company happens to be well known, has business relationships with other asset management companies or has formed joint ventures with any Government agency. NBP Funds needs to clearly understand that it is incumbent upon the AMC to conduct its own due diligence of the customer with which a business relationship is being established, irrespective of its business relations with other entities. The AMC cannot evade its responsibility due to the reason that a company has business relationships with government agencies. Just because a company has business relationship with Government agencies does not elude it from its own AML/CFT responsibility.
- iv. The various instances observed by the inspection team indicated serious lapses in identifying the beneficial ownership of various investors. It is a concern that even eight months after the issuance of AML and CFT Regulations (i.e. issued in June 2018), NBP Funds had not been able to complete the process of verifying customers/ beneficial owners' identity. In the absence of requisite documents/information, as mentioned in the preceding paragraphs, the screening of unitholder database is rendered ineffective and does not serve the purpose/objective of screening of unitholders/ beneficial owners completely. The absence of such critical information is likely to expose the Company to inefficient screening of its customers with SROs/notifications issued by NACTA/provincial governments/ Ministry of Foreign Affairs, etc.

8. It is my considered view that given its professional management and sizeable customer base, NBP Funds should set a much higher benchmark for compliance. It is the obligation of the management to ensure that it is implementing the AML and CFT Regulations in its letter and spirit. I also note with concern that the AMC took steps to rectify the deficiencies observed in the inspection only after the same were brought to its' notice. It is most likely that had the inspection



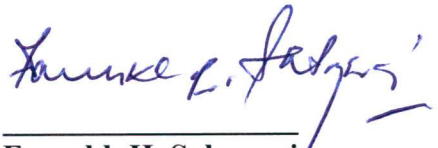
not been carried out, the AMC would have remained non-compliant with respect to AML and CFT regulatory framework.

9. It is my considered opinion that in order to fully comply with the AML/CFT Guidelines, NBP Funds will need to continue to review and monitor on a continuous basis. NBP Funds is, therefore, directed to provide a time bound plan by September 30, 2019, wherein it should provide a roadmap for ensuring complete compliance with the AML and CFT regulatory framework.

10. However, based on my observation at paras 7, 8 and 9 above, I am of the considered view that leniency on non-compliance towards requirements of Regulation 3(1)(a), 6(3)(c), 6(4), 6(5)(a), 7(1)(a), 7(1)(b), 7(2)(a), 9(4)(b), 13(1), 13(2), 13(3) of AML and CFT Regulations, is not possible, since SECP is responsible for ensuring implementation and enforcement of the applicable regulatory framework by entities that fall under its regulatory ambit. Nevertheless, I am willing to take a lenient view with regards to non-compliance of Regulation 14(3)(4) and (5) owing to the plausible argument provided at para 3(vi) above, that these transactions were carried out to realize capital gains, which is a regular practice. Therefore, I hereby conclude the proceedings initiated under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 by imposing an aggregate fine of Rs.250,000 (Rupees two hundred and fifty thousand only) on the Respondent.

11. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of SECP within seven days from the receipt of the order. The receipt or bank challan is to be furnished to SECP. In case of non-deposit of penalty within the given time, a penalty of Rs.25,000 per day during which default continues shall be charged, after which proceedings for recovery of the fine as arrears will be initiated.

12. This order is being issued without prejudice to any other action that the Commission may initiate against the Company in accordance with the law on matter subsequently investigated or otherwise brought to the knowledge of the Commission.


Farrukh H. Sabzwari
Commissioner (SCD)

Announced on:
September 17, 2019 at Islamabad